address related problems or allegations. Of course, this standard not only prohibits intentional misconduct by Ameritech, but also requires Ameritech to monitor its own compliance to assure that problems are not created inadvertently, or through negligence or oversight. Although no such case has yet been brought before the FCC (because no BOC has been authorized to provide interLATA services under §271), we expect that the FCC will investigate any such allegations of improper conduct with great seriousness, and order substantial penalties and remedies where warranted.

45. Michigan state law also provides effective penalties and enforcement mechanisms to enforce these statutory requirements. For Ameritech, violations of relevant Michigan Law (§601) or orders of the Michigan Commission (§305(n)) are subject to one or more of the following: (1) fines of $1,000 to $20,000 per day of violation for an initial offense, and $2,000 to $40,000 per day of violation for a subsequent offense, (2) refunds to ratepayers of any excessive amounts collected, (3) revocation of a violator's license to provide telecommunications services, (4) issuance of cease and desist orders by the Commission, and (5) remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of a violation. The Commission is also specifically authorized to require changes in how telecommunications services are provided as a means to remedy violations of the law or Commission orders (§205). Procedurally, complaints can be filed by any party, or initiated by the Commission itself (§203), and the Commission may investigate all complaints, however initiated (§205(1)). Once a complaint is properly filed or instituted, if a hearing is not held, the Commission must issue its decision within 90 days

(§203(5)); in cases where hearings are held, the Commission decision must issue within 180 days of the hearing date, or 210 days if all parties agree to an extension (§203(6)). At the option of a complainant (and for all disputes involving less than $1,000), a 45-day alternative dispute resolution process is invoked to expedite the case; if that process is unsuccessful, a full complaint hearing will be held (§203a). During the pendency of a complaint case, no provider may discontinue such service if the complaining provider receiving the service posts a bond, letter of credit, or adequate surety as determined by the Commission (§203(8)). And, final decisions of the Commission are subject to judicial review, providing yet another safeguard (§203(7)).

46. Experience confirms the ability and willingness of the Michigan Commission to accept and adjudicate complaints on a timely basis that is available to all parties. [7] The Commission maintains rules of practice and procedure that permit formal or informal complaints to be filed with respect to "alleged unjust, inaccurate, or improper rates and charges or unlawful or unreasonable acts, practices or omissions of a utility or motor carrier, including a violation of any commission rule, regulation or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered by the commission." [8] Complaints can be filed by "a person having an interest in the subject matter of the complaint," or by the commission on its own motion, or by the Commission staff. Clearly,

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[7] Note that this analysis (of the Michigan Commission's regulatory process and willingness and ability to remedy problems) is applicable broadly, not just to cross-subsidy issues.

[8] Department of Commerce, Public Service Commission, Practice and Procedure Before the Commission, R. 460.17501.

these rules offer broad latitude for competitors, the Commission staff or other parties to file complaints regarding just about any aspect of Ameritech's conduct they believe improper, or harmful to competition.

47. Under its rules, the Commission has heard and adjudicated a number of complaints against Ameritech in recent years, such as a complaint by MCI alleging improper denial of intraLATA presubscription (Case No. U-10138 filed July 31, 1992, resolved by Commission order on February 23, 1993), a complaint by City Signal [9] alleging improper cross-subsidy by Ameritech of a competitive bid to provide video services to a school district (Case No. U-10225 filed October 26, 1992, resolved by Commission order May 21, 1993, reversed by the Michigan Court of Appeals October 16, 1995), a complaint by the Commission staff alleging that Ameritech discounts on calling card surcharges from Ameritech pay telephones constituted unlawful discounted bundling of a regulated and unregulated service (Case No. U-10665 filed August 24, 1994, resolved by Commission order March 10, 1995), a complaint by AT&T alleging that Ameritech's intrastate access service rates were excessive (Case No. U-10852 filed May 12, 1995, resolved by Commission order December 7, 1995), and a complaint by Sprint (joined by AT&T and MCI) alleging that Ameritech improperly encouraged customers to place a "freeze" on changes of presubscribed carriers, thereby harming the ability of interexchange carriers to compete with Ameritech just as intraLATA

[9] City Signal merged with Brooks Fiber Communications of Michigan, Inc. on February 1, 1996.

presubscription was beginning (Case No. U-11038 filed February 14, 1996, resolved by Commission order August 1, 1996).

48. For purposes of this analysis, several things are noteworthy about this recent history of complaint proceedings at the Michigan Commission. First, while few in number, most of these cases addressed allegations of cross-subsidy and/or anticompetitive behavior by Ameritech; and, in two of those (Nos. U-10225 and U-10665) the Commission found violations that warranted substantial penalties (although one decision was overturned on appeal due to Commission legal error). In another case, the Commission used its authority to compel Ameritech to cease and desist, and provide new and fully remedial information to its customers (No. U-11038). The latter case also demonstrated the Commission's ability to obtain internal Ameritech documents that could be adverse to the Company's interests, as internal Ameritech memoranda are cited in the order as evidence supporting the plaintiffs' theory of the case. While these particular violations do not constitute a significant pattern of misconduct by Ameritech, they do demonstrate the willingness of the Commission to penalize Ameritech where violations of competitive protections are found. Second, these complaints were each heard and decided relatively quickly before the Commission (averaging just under seven months for the four concluded matters, including hearings). This confirms the Commission's willingness and ability to hold to the statutory timeliness that assures complainants an expeditious resolution of their cases. Finally, the fact that competitors directly brought the majority of these complaints is further evidence of their ready access to (and willingness to use) the Commission's process as parties, which adds to the efficacy of

regulatory oversight of Ameritech. As we both experienced during our tenure as Commissioners and have observed since, parties such as AT&T, MCI and other competitors have substantial resources that they devote to the regulatory process (including expert attorneys, engineers, accountants and economists who are familiar with regulatory issues), and are prepared to challenge Ameritech and other incumbent providers aggressively when they feel anticompetitive activities are occurring. Similarly, these competitors are well-positioned to detect any actions by Ameritech that they might consider adverse to their interests. It is inconceivable that Ameritech actions that could cause any meaningful anticompetitive harm would not be readily apparent to these competitors, and thus quickly brought to the attention of the Commission and remedied accordingly. In Michigan, parties like these provide a motivated and effective supplement to the Commission and its staff in terms of overseeing Ameritech's actions.

49. Another recent case reemphasizes the Commission's willingness to adjudicate pro-competitive cases against Ameritech. On June 26, 1996, the Commission ordered that Ameritech should immediately comply with prior Commission orders establishing a conversion schedule for 1+ intraLATA equal access, or immediately reduce access charges by 55 percent for nonconforming offices that should have been converted (Case No. U-10138). Issued in response to a joint motion to compel filed by AT&T and MCI on May 2,

1996, this Order determined that the Michigan Telecommunications Act did not offer Ameritech relief from this requirement. [10]

50. Thus, in summary, both federal and Michigan law contain numerous, overlapping and cumulative prohibitions against any potential Ameritech attempt to provide a cross-subsidy to its new interLATA business. These prohibitions are stated in clear and unequivocal terms, and are backed up with ongoing compliance audits, as well as broad authority in both jurisdictions for regulators to order remedies and penalties. History demonstrates that these prohibitions will be effectively and swiftly enforced. In and of themselves, these prohibitions are sufficient to prevent any improper cross-subsidy from other Ameritech services to new long distance offerings.

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[10] Ameritech unsuccessfully argued before the Commission that Section 312b permitted Ameritech to convert only 10 percent of its customers to 1+ intraLATA equal access prior to obtaining interLATA relief. We note that this case has continued into the courts, as both the Commission and Ameritech are maintaining their positions with respect to the interpretation of Section 312b. Most recently, on December 4, 1996 the Michigan Court of Appeals stayed the Commission's Order. We would also note that Ameritech's interpretation of the statute is consistent with the general policy preference of Congress in tying intraLATA presubscription to interLATA entry (Federal Telecom Act, §271(e)2), although Congress did grant an exception for states that had already ordered presubscription (Federal Telecom Act, §271(e)2(B)). There is no doubt that the end result will be full 1+ equal access on or before the date that Ameritech offers interLATA services, although the extent of linkage with interLATA authorization is still uncertain. As an overall observation, the governmental process for resolving this dispute is working as it should.

E. Preventing a Cross-Subsidy From Other Service Prices

51. As we indicated above, there are two sides to an improper cross-subsidy: (1) The ability to channel funds in support of a subsidized price for one service, and (2) the need to link that subsidy to increases in other prices or the maintenance of existing prices above reasonable levels to serve as the funding source. In Section D, we discussed how the first of these is not possible under applicable federal and state regulatory rules and authority in Michigan. Here in Section E, we show how the second is not possible, either.

52. Before turning once more to regulatory protections, we would briefly remind the reader that local competition is a wholly sufficient prevention against improper cross-subsidy, because the market will then set or constrain all of Ameritech's prices. Competitive markets do not permit particular competitors to increase prices based on firm-specific cost allocations, cost calculations, or attempts to create internal cross-subsidy flows. Once again, however, it is not necessary to accept the efficacy of local competition in Michigan in order to conclude that regulation will prevent a cross-subsidy related to Ameritech's interLATA services.

53. The presumed sources of a cross-subsidy would be basic local exchange and access charges. In Michigan, Ameritech's basic local exchange and access service prices are governed by the provisions of the Michigan Telecommunications Act. To serve as a source of cross-subsidy, these prices would need to be increased (or otherwise maintained above reasonable levels) to cover costs or provide resources to Ameritech's separate subsidiary

interLATA business. Therefore, we need to examine how these prices may be changed by Ameritech or maintained above reasonable levels by shifting costs from interLATA operations, and whether those changes can be linked to such a cross-subsidy.

54. Section 304 specifies several methods by which Ameritech may change its Michigan basic local exchange service prices; over the next few years, these will amount essentially to a two-part process. The first part is the restructuring of basic local exchange, toll, and access services so that prices for all exceed incremental costs (as required under Section 304a by the year 2000). This restructuring must be completed (per §304(9)) before Ameritech can seek a basic local exchange service rate increase under the other two means (§304(b) or §304(c)). Once all prices are above incremental cost, there are two further options by which Ameritech may seek to increase basic rates: (1): Under §304(b), Ameritech may elect annual basic rate increases that do not exceed a statutory price cap formula that includes the prior year's inflation, as measured by the consumer price index, minus one percent, or (2) under §304(c), Ameritech may request a basic rate increase that exceeds the price cap limitation.[11] However, Ameritech bears the burden of proving that a §304(c) rate increase is just and

[11] Under §304(a) Ameritech may also offer basic service rate reductions or discounts that are effective upon filing with the Commission

reasonable, [12] and the Commission can accept or reject such an application in whole or in part.

55. Ameritech's carrier access charges are governed by Section 310(2), which permits Ameritech to establish those charges within a range of Ameritech's interstate access charges at the high end, and TSLRIC at the low end. Ameritech is authorized to negotiate access charges within this range with other carriers, which can apply to the Commission to resolve the issue if agreement cannot be reached. Indeed, one of the complaint cases noted above (Case No. U-10852) involved an AT&T objection to Ameritech's access charge levels; there, the Commission ordered those levels reduced upon finding that they exceeded Ameritech's comparable interstate charges.

56. For a number of reasons, none of these methods for changing basic local service or access rates would permit Ameritech to create a cross-subsidy to benefit its interLATA business. Most significantly, there is no overall earnings ceiling or rate-of-return limit that would tie an increase in these rates to a decrease in (or the potential underpricing of) Ameritech's interLATA service prices. Therefore, changes in basic service or access prices are wholly independent of potential Ameritech interLATA services, and there is no way for

[12] Such a rate increase can be justified only by one or more of the following: The TSLRIC of basic local exchange services, rate comparisons to other Michigan providers for the same service, the addition of features, functions or capabilities to the service, whether the cost of providing basic service has increased in the geographic area for which increases are proposed, or whether new infrastructure investment in a geographical area is feasible absent the increase (§304(7)).

Ameritech to link them. For example, since interLATA services must be priced at or above TSLRIC when offered (§321), there would be no opportunity for Ameritech to include interLATA toll service prices in rate rebalancing (§304a). Once rate rebalancing is completed, the price cap formula that would then apply (§304(b)) permits annual basic rate increases only as a result of an inflation and productivity index that cannot be affected by Ameritech interLATA service costs, prices, cost allocations, or anything else about interLATA services. Were Ameritech to apply for a basic local service increase in excess of the price cap limit (§304(c)), its application would certainly be subject to the highest scrutiny, and as noted before, the permissible criteria for Commission review include the cost, capabilities and price of basic local service, or the need for a rate increase to support a specific infrastructure investment -- not any costs related to interLATA service.

57. Thus, even if Ameritech could in some fashion misallocate costs or cause an inappropriate transfer of resources to its interLATA operations (which, as indicated above, would have to occur despite many layers of specific federal and state prohibitions and oversight), Ameritech would have no way to take those misallocated costs and translate them into authority to raise basic service or access prices by any corresponding amount. The principles for adjusting Ameritech's Michigan rates simply do not include allocated costs or booked expenses, nor therefore the potential for including *misallocated* costs or *incorrectly* booked expenses. In addition, the recent regulatory focus on incremental costs assures that the Michigan Commission will have incremental cost information available with respect to Ameritech's basic service, providing a ready benchmark for comparison to any proposed rate

increases to assess whether they would result in basic rate contribution levels that could indicate some kind of cross-subsidization. [13] Similarly, there is no way for Ameritech to try to create a cross-subsidy by seeking basic rate increases to make up for earnings shortfalls caused by subsidized interLATA services, because a need for increased earnings is not a permissible criterion for basic rate increases.

58. Perhaps the strongest argument suggesting the potential for a cross-subsidy might be offered with respect to Section 304(7)(e), which allows the Commission to consider a Section 304(c) basic rate increase in light of whether "The provider's further investment in the network infrastructure of the geographic area of the proposed rate increase is economically justifiable without the proposed rate." It might be claimed that an overall network investment was specifically designed for the undue benefit of Ameritech's interLATA business, yet paid for in part by an unreasonable basic rate increase that might be granted by the Commission. But such an attempt, if somehow technically feasible and attempted by Ameritech, would be confounded in several ways. First, under the Telecom Act and the Michigan Telecommunications Act, any capability or service offering made by Ameritech to its interLATA affiliate would have also to be offered on the same terms and conditions to any other unaffiliated provider (e.g., Telecom Act §272(c)&(e), Michigan Telecommunications Act §305(1)(o)). Thus, even if Ameritech could somehow obtain a basic rate increase to cross-subsidize a new investment whose use would be offered to its

[13] Indeed, as noted above, Section 304(7)(a) identifies "total service long run incremental cost of basic local exchange services" as one of the potential criteria for reviewing such a rate increase request.

interLATA affiliate, the result would be for Ameritech to subsidize all interLATA providers, because all would have the right to use the same capabilities on the same terms. Second, any such proposed rate increase by Ameritech would receive great scrutiny from the Commission and all interested parties either following interLATA entry (or in anticipation of Ameritech's announced plans for interLATA entry, if rebalancing can be completed prior to entry). There is no chance that such a rate increase would be approved uncritically, or without a careful regulatory examination of any potential linkages to Ameritech's interLATA business. Indeed, as noted above, the Commission will be "helped" in this regard by Ameritech's competitive opponents eager to achieve the same goal of preventing any such cross-subsidy, and willing and able to devote considerable resources to the task in the form of expert analysis and advocacy. [14]

59. Similarly, in its order addressing the pricing of unbundled network elements and interconnection, the FCC adopted a new TELRIC standard as the basis for pricing unbundled network elements.[15] TELRIC costs are to be forward-looking element-specific incremental costs, not based on embedded costs or amounts found in current LEC investment or expense accounts. Prices based on TELRIC shall include an amount of forward-looking joint and common costs also unrelated to current LEC expenses or investments. It is apparent that such TELRIC-based costs and prices for telephone company network elements will exclude

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[14] While it is possible one could attempt a similar argument with respect to Section 304(7)(d), which permits the Commission to consider "whether there has been an increase in the costs to provide basic local exchange service in the geographic area of the proposed rate," that argument would be no stronger than the one with respect to Section 304(7)(e).

[15] Infra., note 2.

any current, potentially misallocated costs incurred by a long distance separate subsidiary, thus frustrating any effort to achieve a cross-subsidy derived from the prices of unbundled components. [16]

60. Neither could a cross-subsidy be generated by an increase in Michigan access charges due to an increase in the federal jurisdiction access charges that serve as the ceiling for Michigan prices, for at least two reasons. First, under the FCC access charge rules, Ameritech has opted for the highest productivity offset, thereby creating a pure price cap without earnings sharing. Once again, since prices are independent of booked earnings or expenses, Ameritech's FCC (and therefore Michigan) access charges cannot be raised to cover the earnings shortfall caused by a subsidy to interLATA services, nor any related misallocation or costs or misbooking of expenses. Second, notwithstanding a recent modest increase (Ameritech had been voluntarily pricing access charges at less than required by the FCC's formula, and decided to reduce that effective discount), the history of Ameritech's federal jurisdictional access charges shows a pattern of continuing decline that is only expected to continue as the FCC pursues access charge reform. If any confirmation was needed of this trend, it was provided by the FCC's implementation of Section 251 of the

[16] Even if the ongoing appeal of the FCC Order is successful, there is no apparent bar to the use of the same (or a similar) standard by Michigan on its authority in resolving arbitration proceedings, or reviewing and approving negotiated agreements between Ameritech and its competitors. In any event, assuming that the FCC were to be found to lack authority to preemptively interpret these pricing standards, Sections 251(d) of the Federal Telecom Act would appear to prohibit a state Commission from attempting to set prices for unbundled network elements or interconnection on a basis that could potentially include an allocation of current costs from an interexchange affiliate, even if such a cross-subsidy were not otherwise unlawful and impossible for the many reasons cited herein.

Federal Telecom Act. [17] The trend is clearly down; there is no reason to expect interstate access charges to stay at current levels, let alone increase to support a cross-subsidy to interLATA services.

61. Even though no cross-subsidy could be created through changes to basic service prices or access charges, it might be argued that such prices are excessively high already, and that maintaining even current prices would create a source of cross-subsidy. However, this argument is faulty for two reasons. In view of the competitive market for local service that has already started in Michigan and is accelerating in scope (as Harris and Teece demonstrate), above-market prices for either local service or unbundled elements of that service will not be sustainable. Competitors will be able to resell retail services at a discount, or pick and choose among the attractively priced portions of the network and construct or seek out alternative suppliers for any parts for which favorably priced portions exist. Moreover, the appropriate levels for access charges going forward are now and will continue to be under consideration at the FCC and the various state commissions. This

[17] The FCC concluded that competitors were free to obtain the equivalent of LEC access services through combining unbundled elements purchased separately from the LEC, and potentially priced far below current access charge levels. The FCC did permit LECs to collect, on a transitional basis only, 75 percent of certain access charge elements from purchasers of unbundled local switching who use it to switch interstate traffic; this authority expires the earliest of (1) July 1, 1997, (2) the date the FCC completes its universal service and access reform proceedings, or (3) the date a BOC is authorized to provide interLATA service under Section 271 of the Federal Telecom Act (First Report and Order [supra note 2]), paragraph 721). Thus, Ameritech's entry into the interLATA market may itself cause access charges effectively to fall further.

ongoing regulatory oversight will serve as a check on the use of access charges to skew growing competition in either the local or long distance markets in an inequitable way.

62. It is unfair for monopoly customers to be charged excessive prices. However, if this were the case, the practical result is a somewhat higher revenue stream for Ameritech unrelated to potential participation in new businesses such as interLATA. Such excess revenues would increase Ameritech's cash flow just like any other source of increased revenues or profitability (such as an upsurge in basic service connections, or improved cost-cutting). So, while starting prices that were "too high" would be unfair, such prices would not create any improper cross-subsidy linkage to new businesses. While some might argue that more cash flow potentially supports more anticompetitive behavior, such speculation would be just as true for any other business as for Ameritech, and would have nothing to do with an Ameritech bottleneck or any need for related, proactive line-of-business restrictions.

63. To conclude, under Michigan law there is no basis in cost allocation, recorded expenses, or earnings for Ameritech to seek an increase in basic rates or access charges, so there is no way for Ameritech to recover misallocated costs or losses that might be due to a cross-subsidy somehow directed to its interLATA services despite their location in a fully-separated subsidiary. Ameritech's prerogatives under Michigan regulation do not include any means to seek recompense for the cost of such a cross-subsidy, even if it could somehow be accomplished despite the numerous barriers against it.

F. The Promotion of Local Competition Through Regulatory Safeguards

64. An important concern motivating the MFJ's line-of-business restrictions was that BOCs could deny or degrade interconnection with their bottleneck facilities in order to harm competitors. In the absence of facilities-based local competition, BOCs control essential facilities that competitors need to reach customers (or, in the case of equipment, for customers to make use of competitors' products) to make their businesses viable. By denying access to these facilities, or by discriminating unfairly against competitors in its provision, BOCs could adversely affect competition.

65. To state this question another way, the Telecom Act requires Ameritech to cooperate with what some believe it would otherwise attempt to refuse (pro-competition regulatory requirements), in exchange for something Ameritech wants (interLATA authority). Once given the latter, would Michigan regulation permit Ameritech to renege on the former? The answer clearly is no, for several substantial reasons.

66. As reflected explicitly in the Telecom Act and the Michigan Telecommunications Act, public policy has taken an affirmative role in promoting local competition, especially by linking potential permission to offer interLATA services to the attainment (and ongoing satisfaction) of a broad range of interconnection, unbundling and related requirements and objectives on the part of the BOCs (which include, but go beyond prior BOC equal access and interconnection obligations), and which must actually result in competition before

interLATA entry can be authorized. These linkages are evident in Section 271 of the Telecom Act (and especially in the "checklist"), in the Michigan Telecommunications Act's provisions seeking to promote interLATA competition, [18] as well as in its other provisions designed to promote competition for local and toll services, including placing related affirmative duties upon Ameritech. Indeed, the Michigan Telecommunications Act effectively enshrined in independent state authority many of the important pro-competition requirements later included in the Telecom Act. To review a few of these requirements briefly, as they relate to Ameritech: Local governments are required to permit competitors to use rights of way on reasonable terms (§251-253). A long and comprehensive list of prohibited actions is enumerated, including (among others) discrimination in providing competitive access, any refusal to offer or delay in providing interconnection (including providing inferior quality interconnection), degradation of the quality of access service, impairment of the speed, quality or efficiency of lines used by another provider, or the development of new services to take advantage of planned but not publicly known network changes (§305). All of Ameritech's interstate access arrangements and co-location must also be offered on an intrastate basis, and Ameritech cannot discriminate in access services among providers (§310(4-5)). Ameritech must impute the use of essential facilities into the prices of toll and other competitive services, and all toll services are to be available for resale (§311, §362). Pricing rules are specified for unbundled loops, interconnection and number

[18] Section 312b required a progressive implementation of 1+ intraLATA dialing parity and interLATA service by all local exchange providers commencing January 1, 1996; it also required the Commission to seek any needed federal waivers. As noted earlier, Ameritech has been ordered to provide 1+ intraLATA equal access, but has yet to offer interLATA services in the absence of federal authority to do so.

portability (§352-53). Ameritech must unbundle basic services into at least loops and ports, and allow virtual co-location (§355-56). Most Ameritech services must be available for resale at discounted prices (§357). Ameritech must provide number portability (§358). Local traffic termination charges are to be established at nondiscriminatory prices (§359). Ameritech's directory assistance is to be resold (§360). Ameritech's poles, ducts and conduits are to be available to other providers (§361). Ameritech must allow other providers to use its customer data bases to complete calls (§363).

67. For purposes of this analysis, the question is how compliance with these provisions in federal and state law relates to the public interest in Ameritech offering interLATA services. On the federal side, we would note again the Telecom Act's provisions concerning the preconditions for entry (§271(d)3(A)), how entry should take place (§271(d)3(B)), and the question we are addressing, whether such entry will serve the public interest, convenience and necessity (§271(d)3(C)). Once the Michigan Commission and the FCC verify the stated preconditions and the FCC authorizes Ameritech's interLATA entry, the ongoing public interest question is whether Michigan regulation will require Ameritech to continue to comply with all relevant safeguards and local competition requirements.

68. The first reason Michigan regulation would not permit Ameritech to renege is the joint federal-state statutory framework that applies to these pro-competition requirements. A brief review of the applicable requirements of the Telecom Act and the Michigan Telecommunications Act makes this clear.

69. In this regard, perhaps the most comprehensive requirement of the Telecom Act is Section 271(d)2(B), which requires the FCC to consult with the Michigan Commission (as part of an application for interLATA authority) to verify Ameritech's compliance with the exhaustive list of requirements established by Congress in Section 271(c) (which also include, effectively, compliance with several other important requirements of the Telecom Act such as Sections 251 and 252). In recognition of this role and obligation, the Commission opened Case No. U-11104 on June 5, 1996 to serve as a docket for assessing Ameritech's compliance or noncompliance with the competitive checklist. All parties are invited to participate in this proceeding, and the evidence cited throughout this affidavit demonstrates that the Commission will undertake a fair and objective review of Ameritech's checklist status. Given the involvement of the Michigan Commission in the federal application process, ongoing compliance will become not just a matter of federal authority (such as in the Telecom Act's Section 272(d)6(B) provision permitting direct complaints to the FCC for resolution within 90 days), but also of state jurisdiction.

70. In other words, were Ameritech to renege on its pro-competition regulatory obligations once having received interLATA authority, complaints could be filed with the Michigan Commission (as well as the FCC), either for violation of a Commission order (if the verification process resulted in a Michigan Commission order requiring ongoing compliance), or under the specific Michigan legislative requirements that parallel federal law, or under the general Michigan complaint provisions referenced earlier that permit parties to challenge "alleged unjust, inaccurate, or improper rates and charges or unlawful or unreasonable acts,

practices or omissions of a utility or motor carrier, including a violation of any commission rule, regulation or order, including a tariff filed or published by a utility or motor carrier, or a violation of a statute administered by the commission." [19] Thus, the specific involvement of the Michigan Commission in the federal interLATA application process effectively bootstraps the Telecom Act's pro-competition interLATA entry requirements into a matter of parallel state enforcement.

71. Similarly, the Telecom Act's primary implementation vehicle for pro-competition obligations is through carrier-to-carrier negotiations which are to result in agreements to be approved by state commissions (§252(e)), or disputes to be resolved by state commissions through mediation and arbitration within specified time constraints (§252(a-c)). [20] Thus, all carrier-to-carrier agreements will become the subject of state commission orders setting specific pro-competition conditions in place. [21] A failure by Ameritech to comply with an ongoing, state-approved agreement would be an obvious ground for complaint with the Michigan Commission. This is another way in which the Telecom Act's requirements are

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[19] Infra, note 4.

[20] In recognition of its responsibilities in this regard, the Commission has promulgated its rules for conducting arbitration of disputed agreements (July 16, 1996 Commission Order in Case No. U-11134). As of this writing, these procedures are already in use to resolve Ameritech's negotiations with AT&T.

[21] While such state commission orders can be appealed to federal court (§252(e)6) or to the FCC if a state fails to act (§252(e)5), presumably the ultimate result of an appeal would be an order that could be enforced at the state level.

essentially made a part of the state jurisdiction, with access to state-level remedies for violation or noncompliance. [22]

72. At times, allegations have also been made that BOCs such as Ameritech might accede to interconnection and unbundling requirements and prices while attempting to degrade the quality of important facilities made available to competitors. It is difficult to imagine how any such degradation, if attempted surreptitiously by Ameritech with the intent of affecting other carriers' customers, could be accomplished undetected by Ameritech's technically-sophisticated competitors. In any event, such problems, if they should occur, would certainly be appropriate subjects for complaint, and would be resolved and remedied under the procedures described herein, either at the Commission or the FCC.

73. We have discussed how implementation of the Telecom Act will necessarily involve Michigan state authority and thereby impose barriers to any Ameritech attempt to renege on its pro-competitive obligations. We now turn to Michigan's independent state-level regulatory commitment to competition, which is another reason why Ameritech will not be able to renege on its obligations. Indeed, Michigan's prior regulatory achievements in

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[22] The Michigan Commission did deny a March 1, 1996 motion by AT&T Communications of Michigan for an order directing all Michigan local exchange carriers to comply with certain provisions of the Telecom Act (April 10, 1996 Order in Case No. U-11056). The Commission found no specific state authority compelling such a result, and noted that the FCC was still considering how to implement the Telecom Act. Even though this request was found premature at the time, it is clear that the Michigan state jurisdiction will also be involved due to the state role in Telecom Act implementation, as described above. In any event, the Commission dismissed AT&T's petition without prejudice in recognition that its issues might later become relevant.

opening up its markets to new entrants also demonstrate a sustained policy and practice of promoting competition that will continue into the future. And, Michigan's independent statutory requirements are overseen by a Commission whose demonstrated policy is to give them full effect in promoting competition, with or without the agreement of Ameritech.

74. Michigan's policy favoring local competition began with the original enactment of the 1991 Michigan Telecommunications Act (MTA), [23] which created a pioneering state-level regulatory framework permitting competition for local telephone service. The Michigan Commission was closely involved in the formulation of the MTA, was consulted by the bills' sponsors on significant amendments, and supported its final passage. In March, 1993, the Commission adopted uniform filing standards for applications to provide local service. [24] Under these rules, 11 companies have been certified to compete with Ameritech-Michigan. City Signal (now Brooks Fiber) applied on April 5, 1994, and was certified on October 12, 1994 to compete with Ameritech's local telephone service in the Grand Rapids area. [25] Subsequently, MCI Metro Access Transmission Services, Inc., [26] MFS Intelenet of

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[23] 1991 PA 179.

[24] March 1, 1993 Commission Order in Case No. U-10129.

[25] October 12, 1994 Commission Order in Case No. U-10555.

[26] March 29, 1995 Commission Order in Case No. U-10610.

Michigan, Inc., [27] TCG Detroit, [28] AT&T Communications of Michigan, Inc., [29] LCI International Telecom Corp., [30] WinStar Wireless of Michigan, Inc., [31] USN Communications, Inc., [32] Continental Telecommunications of Michigan, [33] Climax Telephone, [34] and BRE Communications, [35] have been certified to offer local service in competition with Ameritech; several other applications are pending before the Commission. Additionally, it is noteworthy that Ameritech did not oppose approval of these applications.

75. Ameritech has also signed interconnection agreements with Brooks Fiber, MFS, and USN Communications. Other interconnection agreements, with TCG, AT&T, and MCI Metro, have been approved through the arbitration process, and another, with Sprint, will be approved soon.

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[27] May 5, 1995 Commission Order in Case No. 10721.

[28] April 27, 1995 Commission Order in Case No. 10731.

[29] November 8, 1995 Commission Order in Case No. U-10845.

[30] April 26, 1996 Commission Order in Case No. U-10992.

[31] June 26, 1996 Commission Order in Case No. U-11037.

[32] August 26, 1996 Commission Order in Case No. U-11085.

[33] September 12, 1996 Commission Order in Case No. U-11090. Note that Continental was recently acquired by U.S. West, which brings expertise in providing local telephone service to this Michigan competitor.

[34] October 7, 1996 Commission Order in Case No. U-11143.

[35] October 24, 1996 Commission Order in Case No. U-11139.

76. The Commission has also reviewed and approved the application of Ameritech Communications, Incorporated to offer local telephone service. [36] The Commission's Order authorized ACI to provide service immediately within the service territory of GTE, but required that ACI be authorized to provide local service within Ameritech's service territory only when Ameritech (and hence, ACI) is authorized to offer interLATA service.

77. In addition to certifying new local service competitors, the Commission has also promoted local competition by promulgating rules and procedures for new competitors to interconnect with, purchase needed services from, and otherwise relate to Ameritech as the incumbent provider.

78. The Commission first addressed these issues in Case No. U-10647 (filed August 5, 1994), the application of City Signal for an order establishing interconnection arrangements with Ameritech.

79. In its February 23, 1995 Order in Case No. U-10647, the Commission ordered (1) that Ameritech provide City Signal meet point physical interconnection akin to that provided to other local exchange carriers (rejecting Ameritech's interconnection proposal), (2) that mutual compensation apply equally to the exchange of local traffic (rejecting Ameritech's proposal to collect access charges and not compensate City Signal), (3) that Ameritech offer unbundled loops at the prices proposed by City Signal (Ameritech opposed this unbundling

[36] August 28, 1996 Commission Order in Case No. U-11053.

and proposed that City Signal use other tariffed services instead, e.g. private lines), (4) that Ameritech offer direct inward dialing and remote call forwarding interim number portability requested by City Signal, priced at incremental cost as calculated by MCI (Ameritech sought substantially higher prices), (5) that Ameritech must make directory listings available to City Signal on the same terms as offered to other local exchange carriers (Ameritech had proposed to sell listings to City Signal as if it were a directory publisher), and (6) that interconnection agreements be tariffed and generally available to all competitors (Ameritech sought case-by case contractual status). The Commission also ordered a generic proceeding to address such local competition issues. This precedent-setting order again demonstrated the Commission's commitment to local competition, and willingness to pursue and protect competition.

80. The ensuing omnibus proceeding into local competition led to the Commission's June 5, 1996 Order in Case No. U-10860, which established generic interconnection arrangements between all local exchange providers. In keeping with the provisions of the Michigan Telecommunications Act, the Order codified permanent requirements governing unbundling, mutual compensation, the equal applicability of mutual compensation to new and incumbent providers, the scope of virtual co-location and physical interconnection, interim and permanent number portability requirements, the scope (and terms) of services Ameritech must resell, dispute resolution, and the provision of ancillary services.